

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Doc. No. 96-45
Universal Service)	
)	
1998 Biennial Regulatory Review)	
Streamlined Contributor Reporting)	CC Doc. No. 98-171
Requirements Associated with Administration)	
of Telecommunications Relay Service, North)	
American Numbering Plan, Local Number)	
Portability, and Universal Service Support)	
Mechanisms)	
)	
Telecommunications Services of individuals)	
with Hearing and Speech Disabilities, and the)	CC Doc. No. 90-571
Americans with Disabilities Act of 1990)	
)	
Administration of the North American)	
Numbering Plan and North American)	CC Doc. No. 92-237
Numbering Plan Cost Recovery Contribution)	NSD File No. L-00-72
Factor and Fund Size)	
)	
Number Resource Optimization)	CC Doc. No. 99-200
)	
Telephone Number Portability)	CC Doc. No. 95-116
)	
Truth-in Billing and Billing Format)	CC Doc. No. 98-170

COMMENTS OF THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

The Rural Independent Competitive Alliance (“RICA”) submits its comments in response to the Commission’s *Notice of Proposed Rulemaking* in this docket, released February 26, 2002, FCC 02-43 (“NPRM” or “Notice”). RICA is an alliance of competitive local exchange carriers (“CLECs”) operating in rural areas and affiliated with Rural Telephone Companies. RICA’s comments will focus on the proposal to adopt a “per-connection” recovery method.

I. **A “PER CONNECTION” METHOD OF DETERMINING UNIVERSAL SERVICE CONTRIBUTION OBLIGATIONS WHICH VIRTUALLY ELIMINATES INTEREXCHANGE CARRIER CONTRIBUTION WOULD VIOLATE THE ACT**

- A. The *Notice* Proposes to Adopt a Proposal Promoted by the Largest Interexchange Carriers which would virtually exempt them from any responsibility to contribute to the support of Universal Service.

In order to address various concerns arising from changes in telecommunications markets, such as declining end-user revenues, the largest interexchange carriers have promoted shifting recovery of Universal Service Support to a “connection” based system which conveniently excludes them from any real responsibility to contribute. In place of the current revenue-based system, the IXC plan shifts recovery to wireline and wireless subscribers through a \$1.00 per month charge per connection or per handset for residential and single line business, with multi-line business making up the remaining support requirement.¹ The *Notice* strongly implies that the Commission has already accepted this proposal in principle and is seeking information to finalize the implementation details. For the reasons described below, this tentative conclusion is inconsistent with the governing statute, inequitably distributes the burden of support among users, is not competitively neutral, and ignores more equitable solutions.

- B. The Plain Meaning of Section 254(d) is that *Every* Provider Must Contribute To the Support of Universal Service on an Equitable Basis.

As the *Notice* recognizes, the connection-based assessment methodology proposal must be consistent with the requirement of Section 254(d) of the Act that “Every telecommunications carrier that provides interstate telecommunications shall contribute, on an equitable and nondiscriminatory basis” to Universal Service support.² While there is much in the 1996 Act that

¹ NPRM at para. 31

² *Notice* at para. 66, citing 47 U.S.C. 254(d).
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is not a “model of clarity”, there can be little doubt that Congress meant the term “every carrier” to mean *every* carrier, except for the *de minimis* exception. The Joint Board’s *Recommended Decision* rejected proposals for funding support through charges on end-users on the basis that “these mechanisms would violate the statutory requirement that carriers, not consumers, finance support mechanisms.”³

The *Notice* attempts to avoid this clear commandment by noting that some interexchange carriers have direct connections to customers, and some have competitive local exchange operations. No basis is provided for these statements, not is there any quantification of the number of such direct connections. Given the known totals of ILEC switched access revenues, these IXC direct connections are necessarily a small portion of the business, whether measured by revenue or by customer. In the absence of record data to the contrary, the Commission cannot find that carriers the size of AT&T or Worldcom will contribute to USF support *on an equitable and nondiscriminatory basis* if their contribution is based on a tiny fraction of their interstate business, while all other carriers contribute based on their total business.

Should the Commission ultimately determine to move toward a connection based system, it could at least comply with the “every carrier” requirement by assessing interexchange carriers on the basis of a reasonable proxy for a wireline connection, such as the number of presubscribed lines. In addition to presubscribed lines, it may be necessary to also establish a basis for assessing dial-around service and pre-paid “phone cards.”

³ *Recommended Decision*, CC Doc. No. 96-45, 12 FCC Rcd 87, 496 (1997) The Commission there also rejected use of non-revenue based measures, but focused only on the Joint Board’s concern with the difficulty of determining equivalency ratios. The Commission did not reject, however, the Joint Board’s statutory analysis. *Report and Order*, 12 FCC Rcd 8776, 9210 (1997)

C. By Ignoring Usage Altogether, The Large IXC Proposal Would Result in an Inequitable Allocation of the Burden of Universal Service Support Among Users.

The *Notice* also recognized the question of whether a per-connection charge would be “overly regressive and discriminatory to low volume users.”⁴ The short answer is “yes,” which is strongly supported by the study prepared by Cambridge Strategic Management Group (“CSMG”) for Verizon.⁵ The *Notice* concludes incorrectly that the CSMG study indicates there would not be a “significant” burden shift, but does not explain what the Commission would consider to be significant. The study, however, indicates that a per-line recovery mechanism would increase the USF recovery burden on 80% of US households. Specifically users with no long distance, low long distance usage and medium long distance usage, would see increases of 245%, 128% and 25%, respectively. CSMG believes that these increases may result in consumer “backlash”⁶ These explicit findings contradict the Commission’s conclusion that there would not be a significant burden shift if the per connection plan is adopted.

Sprint argued in its comments that revenues are irrelevant to determining an equitable burden because the purpose of universal service is to support connection, not usage.⁷ RICA agrees that maximizing the number of connections to the public network is an important universal service goal, but that conclusion does not require that connections be the sole measure of responsibility for payment of support. An allocation is not equitable which assesses the same burden on users who derive vastly different interstate benefits from connections. As the Supreme

⁴ *NPRM* at para. 49.

⁵ *NPRM* at para. 48, n.114.

⁶ CSMG Study at 12.

⁷ Sprint Comments, June 25, 2001, at 6-7.

Court said, in a somewhat different context, “it is quite another matter to ignore altogether the uses to which the property is put.”⁸ In short, an equitable allocation of the support of universal service must recognize not only the existence of connections, but also that there are substantial and material differences in the use of those connections.

II OTHER MEASURES ARE AVAILABLE TO ADJUST FOR CHANGES IN THE MARKETPLACE

The Interexchange carriers complaints about the alleged inequities of the present system, even if correct, do not compel the adoption of the proposed connection-based system. For example, the complaints that quarter to quarter true ups are not available could be readily corrected. If carriers are experiencing rapid decline in market share, a mechanism could be established to adjust future obligations to account for past over assessments. To the extent carriers are facing competition from other providers not contributing, the Commission has ample authority to expand the universe of entities required to contribute. In short, the existing system can and should be improved, but such improvement does not need to be accompanied by an illegal and inequitable shift of burden away from interexchange carriers and onto local exchange carriers and wireless providers.

IV CONCLUSION

The Commission should not adopt the proposed per connection method of assessing Universal Service contribution obligations. The plan would virtually eliminate interexchange carrier contribution obligations in violation of the requirement of the Communications Act that

⁸ *Smith v. Illinois Bell*, 282 U.S. 133 (1930)

every provider contribute to the support of universal service on an equitable basis. The plan would also inequitably shift the burden contribution obligation from high toll users to lower and non-users. Other measures are available and should be explored to accommodate changes in the telecommunications marketplace.

Respectfully submitted

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